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CHRISTAKIS
IOAKIM
v.
LIMASSOL
MUNICIPALITY

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTAKIS IOAKIM,

Applicant,

and

THE LIMASSOL MUNICIPALITY AND/OR
THE MUNICIPAL COMMISSION OF LIMASSOL,

Respondent.

(Case No. 302/73).

Recourse under Article 146 of the Constitution—Legitimate interest required under paragraph 2 of Article 146—Recourse dismissed due to absence of legitimate interest in so far as the applicant is concerned—See further infra.

Municipalities—Recourse against appointment to the post of Collector-Weigher Class B by the Municipality of Limassol—Applicant already in the permanent service of the respondent Municipality and his emoluments much higher than those of the appointee interested party—No moral or material interest of the applicant to file the present recourse—Recourse dismissed for lack of legitimate interest in the sense of Article 146.2 of the Constitution.

Legitimate interest—In the sense of Article 146.2 of the Constitution—Moral or material interest—No such moral or material interest to file present recourse—Recourse not maintainable on that ground—Cf. further supra.

Note: The full text of paragraphs 1 and 2 of Article 146 of the Constitution is set out *post* in the judgment of the learned Judge dismissing this recourse for lack of 'legitimate interest' either material or moral. The facts of the case are also set out in the judgment.

Recourse.

Recourse against the decision of the respondent to appoint the interested party to the post of Collector of Dues-Weigher "B" in preference and instead of the Applicant.

V. Orphanos, for the applicant.)

J. P. Potamitis, for the respondent.

Cur. adv. vult

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The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse, which is made under Article 146 of the Constitution, is in the permanent service of the respondent Municipality as a collector of car parking fees, with a salary scale 480x24-672x28-700. He was first appointed as a messenger on a temporary basis in 1965 and in 1967 he was transferred to the post of collector of parking fees also on a temporary basis and as from 1.7.1968 he is holding his present post.

On the 11th April, 1973, the respondent Municipality advertised in the local press a post of collector-weigher and invited applications thereto.

A copy of the "Haravghi" newspaper, dated 11.4.73, in which the said advertisement appears, has been produced as *exhibit 1*.

By letter dated 16.4.73 (*exhibit 5*) the applicant applied for the said post.

The respondent Committee at its meeting of the 15th May, 1973, appointed to the said post a certain Aristodemos Apostolou, who was holding at the time the post of messenger in the service of the respondent Municipality, and, furthermore, appointed Yiannakis Petrou, the interested party, on a temporary basis. The relevant minutes, *exhibit 4*, read as follows:

"The Municipal Committee, for the advertised post of Collector-Weigher class B, unanimously decides and selects among the applicants (a) Mr. Aristodemos Apostolou a permanent messenger of the Municipality and (b) Mr. Yiannakis Petrou, who had previous experience of weigher in the service of the Municipality and possesses the necessary experience for the said post, and authorises the Hon. Chairman to call both of them in order to undertake the duties of weigher as from next Friday, 18.5.73. The emoluments of Mr. Aristodemos Apostolou will be the same as at present and those of Mr. Y. Petrou, whose services at present will be temporary, will be £8.800 mils for a 44 hour weekly work".

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By letter dated 5.7.73 (*exhibit 2*), the applicant protested to the respondent for the appointment of the interested party Yiannakis Petrou to the post of collector–weigher class B, with a scale higher than that of the applicant himself.

By letter dated 16th July, 1973, (*exhibit 3*), the respondent Committee, through the Town Clerk, replied to the applicant informing him at the same time that, taking into consideration the circumstances of the case, they could not cancel the appointment of the interested party. As a result the applicant filed the present recourse by which he claims:

1. A declaration that the decision of the respondent to appoint Yiannakis Petrou of Limassol instead of the applicant to the post of Collector of Dues–Weigher ‘B’ is *null* and *void* and of no effect whatsoever.
2. A declaration that the omission by the respondent to reply to the applicant’s application made on or before 20.4.1973 for the post ought not to have been made, and that whatever had been omitted should have been performed.
3. A declaration that the omission by the respondent to give any reasons in their reply dated the 16th July, 1973 ought not to have been made and that whatever had been omitted should have been performed.

The respondent Committee opposed the application of the applicant and they allege that they never appointed the interested party to the post of collector weigher class B, which post was advertised in “Haravghi” newspaper, on the salary scale alleged by the applicant or any scale at all, but the said interested party was appointed as collector–weigher in the temporary service of the Municipality on daily wages payable weekly at the rate of £8.800 mils per week. This appointment was made in accordance with section 72 of the Municipal Corporations Law, Cap. 240. This section reads as follows:

“ 72. The mayor may employ at the current rate of daily wages any servants or labourers required in the service of the municipal corporation to carry out any work for which provision is made in the current estimates, as approved by the council”.

An employee in the permanent service of a Municipality is appointed under sections 67 and 69 subsections (1) and (2) and always with the approval of the District Officer.

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Counsel for applicant argued that the respondent failed to consider the Application of the applicant, and, in any case, even if they did consider such application they did not consider it properly with impartiality and fairness and so their decision to appoint the interested party was contrary to the rules of natural justice. He also argued that the failure of the respondent Municipality to reply to the application of the applicant, is contrary to Article 29 of the Constitution. Finally, he argued that the decision of the respondent is not duly reasoned.

Counsel for the respondent, on the other hand, over and above the arguments he advanced in answer to the submissions made by counsel for applicant, submitted that the applicant has no legitimate interest to file this recourse.

The first point that falls for consideration in this recourse is whether the applicant has a legitimate interest in the sense of Article 146.2 of the Constitution to file the present recourse. Article 146 of the Constitution reads as follows:

“146.1 The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission”.

In the present case it is clear from the material placed before the Court that the applicant is not complaining for the appointment of Aristodemos Apostolou to the substantive post of collector–weigher class B, but for the appointment of Yiannakis Petrou who, according to the minutes of the respondent dated 15th May, 1973, *exhibit 4*, was appointed as temporary collector–weigher under section 72 of the Municipal Corporations Law, Cap. 240, and whose wages were £8.800 mils per week.

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It is also clear that the emoluments of the applicant are much higher than those of the interested party. Furthermore the interested party was appointed on a temporary basis whereas the applicant is in the permanent service of the respondent. Therefore, the applicant has neither a pecuniary nor a moral interest to file this recourse. In view of my decision on this point I consider it unnecessary to deal with all the other points raised by the applicant.

In the result this recourse fails.

In view of the fact that the respondent Municipality in their letter of 16.7.73 (*exhibit 3*) did not make it clear to the applicant that the main reasons that they could not cancel the appointment of the interested party were the terms of his appointment, I have decided to make no order as to costs.

*Application dismissed; no
order as to costs.*